

Message Text

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INFO OCT-01 ARA-10 ISO-00 HA-05 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01
DOE-15 IO-13 /129 W

-----078914 290622Z/12

R 282008Z JUN 78
FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC 9683

C O N F I D E N T I A L SECTION 1 OF 3 SANTIAGO 4870

E. O. 11652: GDS
TAGS: ETRD, ELAB, CI
SUBJECT: LABOR STANDARDS AND INTERNATIONAL TRADE

REFS: (A) STATE 136706, (B) SANTIAGO 4753

1. SUMMARY: CHILEAN LABOR CODE APPLIES WITHOUT DISCRIMINATION TO THE ENTIRE CHILEAN ECONOMY AND DOES NOT ESPECIALLY FAVOR THE EXPORT OR IMPORT SUBSTITUTION SECTORS. CHILEAN LABOR LAW AND PRACTICE EXPRESSLY PROHIBIT ALL TYPES OF FORCED LABOR AND MOST FORMS OF CHILD LABOR. CURRENT LAW REQUIRES A COMPREHENSIVE PROGRAMS TO REGULATE HEALTH AND SAFETY IN THE WORK PLACE WHICH IN LARGE PRIVATE AND STATE OWNED COMPANIES ARE SELF-IMPOSED AND SELF-ENFORCED. THE GOC HAS EXTENSIVE PROGRAMS TO PROMOTE EXPORTS IN THE INDUSTRIAL, MINING AND AGRICULTURAL SECTORS AND INCLUDES FINANCIAL SUBSIDIES TO AGRICULTURE, FISHING, MINING AND CHEMICAL PRODUCTS NOT AVAILABLE TO OTHER AREAS. REGARDING THE WORK FORCE, THE GOC IS SEEKING TO REMOVE IMPEDIMENTS TO THE FREE CONTRACTING OF LABOR INCLUDING CERTAIN MINIMUM WAGE STANDARDS. FURTHERMORE, THE GOC DOES NOT PERMIT WORKERS TO STRIKE OR BARGAIN COLLECTIVELY, ALTHOUGH IT HAS SAID THAT IT WILL DO SO IN THE FUTURE. IN THE IMPORTANT COPPER EXPORT SECTOR, THE GOC HAS DIRECTLY INTERVENED TO TAKE CONTROL OVER THE TRADE UNIONS REPRESENTING COPPER

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WORKERS. END SUMMARY.

2. HISTORICAL NOTE: CHILE PROMULGATED AN EXTENSIVE BODY OF LABOR LEGISLATION IN 1924 WHICH WAS REVISED AND RECAST IN THE LABOR CODE OF 1931. THIS CODE WHICH HAD BEEN CONSIDERABLY AMENDED TO GUARANTEE JOB AND INCOME PROTECTION, IS CURRENTLY BEING REVISED BY THE GOC. THE FIRST PART OF A NEW LABOR CODE CONCERNING JOB SAFETY AND

INDIVIDUAL CONTRACTS WAS PUBLISHED JUNE 15, 1978.

3. SLAVE AND FORCED LABOR: CHILEAN LAW DOES NOT PERMIT SLAVE, INDENTURED OR FORCED LABOR. ARTICLE 10, CHAPTER III OF THE 1925 CONSTITUTION EXPRESSLY PROHIBITS SLAVERY. CONSTITUTIONAL ACT III DECREED BY THE GOC SEPTEMBER 11, 1976 ALSO ELABORATES THE RIGHT TO PERSONAL LIBERTY AND INDIVIDUAL SECURITY, WITH THE CORRESPONDING GUARANTEES. FURTHERMORE, ARTICLE 32 OF THE PENAL CODE OF 1971 SPECIFIES THAT PRISON SENTENCES OR OTHER PUNISHMENTS IN CONFORMITY WITH THE LAW "DO NOT IMPOSE ANY WORK OBLIGATIONS OTHER THAN THAT REQUIRED BY INTERNAL PRISON REGULATIONS." CHILE IS ALSO A PARTY TO THE INTERNATIONAL LABOR ORGANIZATION CONVENTION NO. 29 WHICH PROHIBITS FORCED LABOR. AN ILO INVESTIGATION TEAM IN APRIL, 1974 FOUND NO EVIDENCE THAT CHILE WAS IN VIOLATION OF THIS CONVENTION. FINALLY, ARTICLE 13 OF THE NEW LABOR CODE MAINTAINS THE RIGHT CONFERRED BY ARTICLE 9 OF THE 1968 LAW 16,455 WHICH PERMITS ANY WORKER TO TERMINATE ANY LABOR CONTRACT SIMPLY BY GIVING HIS EMPLOYER 30 DAYS NOTICE.

4. CHILD LABOR: TITLE II OF THE NEW CHILEAN LABOR CODE LIMITS CHILD LABOR BUT DOES NOT PROHIBIT IT. CHILEAN CITIZENS 18 YEARS OLD AND OLDER ARE PERMITTED TO FREELY CONTRACT THEIR LABOR. CHILEAN YOUTHS 15 YEARS TO 18 ARE PERMITTED TO WORK UNDER THE SOLE CONDITION THAT THEY HAVE OBTAINED THE PERMISSION OF A PARENT, LEGAL GUARDIAN OR LABOR INSPECTOR. CHILDREN 14 YEARS OLD WHO HAVE COMPLETED PRIMARY SCHOOL ARE PERMITTED TO DO LIGHT WORK
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WHICH WOULD NOT INTERFERE WITH THEIR ATTENDANCE AT SECONDARY SCHOOL. THE LABOR FORCE PARTICIPATION RATES FOR CHILDREN AGED 12 THROUGH 14 HAS DIMINISHED CONSIDERABLY OVER THE PAST HALF CENTURY FROM 10.6 PERCENT OF THIS AGE GROUP IN 1940 TO 3.2 PERCENT IN 1970. IT IS ESTIMATED THAT IT IS CURRENTLY 2.3 PERCENT WHICH, OF COURSE, WILL DROP TO ZERO AS THIS NEW LAW TAKES EFFECT. MOST INDUSTRIAL CHILD LABOR IS FOUND IN THE GLASS INDUSTRY. CHILEAN LAW PROHIBITS THE EMPLOYMENT OF MINORS IN UNDERGROUND MINES AND IN ACTIVITIES WHICH REQUIRE EXCESSIVE PHYSICAL EFFORT AND IN ACTIVITIES WHICH MAY BE DANGEROUS TO A MINOR'S HEALTH, SAFETY OR MORALS. MINORS ARE NOT PERMITTED TO WORK IN INDUSTRIAL ESTABLISHMENTS DURING THE NIGHT TIME HOURS FROM 2200 TO 0700 EXCEPT IN A FAMILY BUSINESS UNDER THE SUPERVISION OF A MEMBER OF THE MINOR'S FAMILY. ACCORDING TO INFORMATION PUBLISHED BY THE CHILEAN NATIONAL STATISTICS INSTITUTE THERE ARE APPROXIMATELY 1,030,000 CHILEANS 15 TO 17 YEARS OLD, INCLUSIVE, IN CHILE OF WHICH 586,000 ARE ENROLLED FULL-TIME IN SCHOOL. OF THE REMAINING IT IS ESTIMATED THAT ABOUT 200,000 ARE IN THE WORK FORCE.

4. OCCUPATIONAL HEALTH AND SAFETY: CHILEAN LAW 16,744 OF 1968 ESTABLISHES COMPREHENSIVE OCCUPATIONAL HEALTH AND SAFETY PROGRAM ADMINISTERED UNDER THE MINISTRY OF HEALTH BY THE GOVERNMENT SOCIAL

SECURITY PENSION SYSTEM OR BY PRIVATE NON-PROFIT EMPLOYER MUTUALS. THE LAW AUTHORIZED THESE ADMINISTRATORS TO INSPECT THE WORK PLACE AND TO REQUIRE SAFETY EQUIPMENT AND PROCEDURES FOR THE PREVENTION OF WORK RELATED ACCIDENTS AND WORK RELATED ILLNESSES. THE ADMINISTRATOR IS AUTHORIZED BY LAW TO FINE BOTH WORKERS AND EMPLOYERS FOR NOT COMPLYING WITH SAFETY REGULATIONS AND IN SERIOUS CASES MAY REQUEST THE MINISTER OF HEALTH TO CLOSE A BUSINESS WHICH CONSTITUTES A HAZARD TO EITHER THE WORKERS OR THE COMMUNITY. THIS LAW HAS BEEN QUITE EFFECTIVE IN ESTABLISHING HEALTH AND SAFETY

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LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15

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DOE-15 IO-13 /129 W

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STANDARDS IN CHILEAN INDUSTRY. HOWEVER, THE ENFORCEMENT OF SAFETY REGULATIONS HAS OFTEN BEEN HAPHAZARD AND OF HEALTH REGULATIONS ALMOST NON-EXISTENT EXCEPT BY PRIVATE EMPLOYERS' MUTUALS. THE LAW REQUIRES ALL INDUSTRIES TO ESTABLISH A WORKERS SAFETY COMMITTEE WHICH ESTABLISHES AND ENFORCES SAFETY NORMS WITHIN EACH PLANT. IN SMALL INDUSTRIES, THESE WORKER SAFETY COMMITTEES ARE MOSTLY PAPER ORGANIZATIONS WHICH SIMPLY DO NOT MEET. SINCE INSPECTION OF A PLANT BY A MINISTRY OF HEALTH INSPECTOR IS DONE IN RESPONSE TO A COMPLAINT BY THE WORKERS' SAFETY COMMITTEE, MANY PLANTS AFFILIATED WITH THE STATE PENSION SYSTEM HAVE NOT BEEN INSPECTED. HOWEVER, INDUSTRIES AFFILIATED WITH THE PRIVATE EMPLOYERS' MUTUALS USUALLY HAVE GOOD HEALTH AND SAFETY PROGRAMS.

5. THE MINISTRY OF HEALTH IS REQUIRED BY LAW TO PUBLISH AT LEAST EVERY THREE YEARS A LIST OF TOXIC SUBSTANCES. THE LAW PRESENTLY RECOGNIZES 30 TOXINS AND 17 ILLNESSES AS WORK RELATED. THE LAW REQUIRES INSPECTION AND CONTROL OVER TOXIC SUBSTANCES SUCH AS ASBESTOS, BENZENE, LED SILICA AND COTTON DUST AS WELL AS MERCURY, ORGANIC PESTICIDES, VARIOUS SOLVENTS, CARBON MONOXIDE, OXIDES OF SULFUR AND VINYL CHLORIDE IN THE WORK PLACE

TO REDUCE WORKER EXPOSURE. LABOR RELATED ILLNESSES INCLUDE
DERMATITIS, CANCER, ASTHMA, NEUMOCONOSIS, ENCEPHALITIS, LEUKEMIA
AND MOTOR OR SENSORY IMPAIRMENT.

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6. FREE TRADE ZONES: FOUR LAWS GOVERN THE ESTABLISHMENT OF
FREE TRADE ZONES IN CHILE, DECREE LAWS (DL) 1055 AND 1233 OF
1975, DL 1611 OF 1976 AND DL 1698 OF 1977. THE LAW AS INTERPRETED
BY CENTRAL BANK REGULATION PERMITS THE FREE IMPORTATION, STORAGE,
PROCESSING AND EXPORTATION OF GOODS IN A FREE TRADE ZONE AND ITS
EXTENSIONS. IN CHILE, HOWEVER, THE IMPORTATION INTO A FREE TRADE
ZONE OF PRECIOUS AND SEMI-PRECIOUS STONES, NATURAL PEARLS,
CAVIAR, IMITATION FURS AND PASSENGER AUTOMOBILES WHOSE VALUE
(EX-FACTORY) EXCEEDS \$3,500. IS PROHIBITED. ALSO, THERE EXISTS
A SURCHARGE OF 10,000 (TEN THOUSAND) PERCENT ON THE IMPORTATION
AND TRANSFER OF USED AUTOMOBILES TO AND FROM THE FREE TRADE
ZONES. THE ZONES CARRY LITTLE BENEFIT FOR FOREIGN OR DOMESTIC
INDUSTRIES SELLING TO THE SOMESTIC MARKET BUT RATHER ARE OF POTENTIAL
BENEFIT TO INDUSTRIES WISHING TO TAKE ADVANTAGE OF CHEAP AND SKILLED
LABOR SUPPLY FOR PROCESSING OF GOODS FOR OTHER MARKETS. LABOR
REGULATIONS ENFORCEABLE IN OTHER ARES OF CHILE ARE ALSO
ENFORCEABLE WITHIN THE FREE TRADE ZONES.

7. INDUSTRIAL EXPORT RELATED INDUSTRIES: CHILEAN ECONOMIC
POLICY GIVES PREFERENCE TO NON-TRADITIONAL EXPORT INDUSTRIES
IN CHICH CHILE HAS EITHER A COMPARATIVE OR ABSOLUTE ADVANTAGE.
INDUSTRIES PROCESSING FISH PRODUCTS, COPPER, FOREST PRODUCTS,
WINES, FRUITS AND VEGETABLES ARE USUALLY CONSIDERED AS BEING IN
THIS CATEGORY. CENTRAL BANK CIRCULAR NO. 2675 PROVIDES SPECIAL
FINANCIAL SUBSIDIES TO THE FORESTRY INDUSTRY. THE CIRCULAR PROVIDES
100 PERCENT CENTRAL BANK FINANCING FOR FORESTATION OR REFORESTATION
PROJECTS ON PRIVATE OR PUBLIC LANDS. THE SAME CIRCULAR ALSO
PROVIDES SPECIAL CONCESSIONARY LINES OF CREDIT TO SMALL AND
MEDIUM AGRICULTURE AND ALL INDUSTRIES WHETHER OR NOT THE PRODUCT
IS DESTINED FOR EXPORT. SOME PROTECTION IS GIVEN STATE OWNED
ENTERPRISES IN CENTRAL BANK CIRCULAR NO. 1442 WHICH PUBLISHES
THE RULES FOR FINANCING EXPORTS. THIS CIRCULAR PROHIBITS COMMERCIAL
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BANK FINANCING OF EXPORTS OF ALL COPPER, COOPPER ORE OR COPPER
CONTAINING MINERALS, IRON ORE OR IRON PELLETS OR CONCENTRATES
AND ALL TYPES OF PHOSPHATES. THESE MINERALS ARE ALL PRODUCTS
OF STATE OWNED INDUSTRIES. CHILE ALSO PROHIBITS ADVANCE COMMERCIAL
CREDITS TO FINANCE A NUMBER OF TRADITIONAL EXPORTS OF LARGE STATE
OWNED COMPANIES: COAL, MANAGANESE, MOLYBDENUM, MOLYDENUM

OXIDE, FERROMOLYBDENUM, LIQUID NATURAL GAS, FISH OIL AND FLOUR, NEWSPRINT, CELLULOSE AND CARDBOARD, POLYETHYLENE, POLYVINYL CHLORIDE AND MARIEN FULE AND LUBRICANTS. HOWEVER, CHILE PERMITS FINANCING OF ALL OTHER EXPORTS BY COMMERCIAL BANKS WITH TERMS UP TO FIVE YEARS. EXPORTERS ALSO MAY RECEIVE CREDITS 150 DAYS IN ADVANCE. AS AN ADDED INCENTIVE, THE CENTRAL BANK RETURNS TO EXPORTERS THE 20 PERCENT VALUE ADDED TAX PAYABLE ON ALL TRANSFERS AND SALES OF GOODS IN CHILE.

8. FOREIGN INVESTMENT: CHILEAN DECREE LAW 1784 PUBLISHED MARCH 18, 1977 ENCOURAGES FOREIGN INVESTMENT IN CHILE BY PERMITTING 100 PERCENT REPATRIATION OF CAPITAL AFTER A MINIMUM PERIOD OF THREE YEARS (EIGHT YEARS FOR LARGE SCALE MINING PROJECTS). THE LAW PERMITS FOREIGN INVESTORS TO NEGOTIATE SOME OF THE TERMS AND CONDITIONS OF ENTRY AND TO CHOOSE EITHER A FIXED TAX OF 49 PERCENT OF THE PROFITS FOR A TEN YEAR PERIOD OR ADHERE TO THE LOCAL CHILEAN TAX SYSTEM AS APPLICABLE TO NATIONAL FIRMS. THE INVESTOR MAY EXERCISE THIS OPTION ONLY ONCE. THE GOC HAS MADE AN EFFORT TO ATTRACT FOREIGN INVESTMENT IN CHILE. BETWEEN JULY 1974 AND APRIL 1978, A TOTAL OF \$2,447.6 MILLION DOLLARS IN FOREIGN INVESTMENT HAS BEEN APPROVED (AS DISTINGUISHED FROM ACTUALLY TRANSFERRED) BY THE FOREIGN INVESTMENT COMMITTEE IN THE FOLLOWING SECTORS: MINING, \$2,233 MILLION (90 PERCENT OF TOTAL INVESTMENT), INDUSTRY \$119.7 MILLION (4.8 PERCENT), SERVICES \$54 MILLION (2.2 PERCENT), TRANSPORT \$9.7 MILLION (0.3 PERCENT), AGRICULTURE \$1.6 MILLION (0.07 PERCENT), ENERGY AND COMMUNICATIONS \$1.3 MILLION (0.05 PERCENT),

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STR-07 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01
DOE-15 IO-13 /129 W
-----079205 290254Z /14

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CONSTRUCTION \$0.9 MILLION (0.03 PERCENT) AND UNSPECIFIED \$27.4 MILLION 1.1 PERCENT). THE UNTIED STAES AND CANDA ACCOUNT FOR

91.8 PERCENT OF THE TOTAL FOREIGN INVESTMENT, THE COMMON MARKET FOR 2.6 PERCENT, OTHER LATIN AMERICAN COUNTRIES 2.4 PERCENT AND ENGLAND FOR 0.7 PERCENT. MOST OF THE \$119 MILLION IN FOREIGN MANUFACTURING INVESTMENT WAS INVESTED IN EXPORT INDUSTRIES. THE LARGEST FOREIGN INDUSTRIAL MANUFACTURING COMPANIES NOW IN CHILE INCLUDE: LEVER BROTHERS, GENERAL MOTORS, DOW CHEMICAL, PHILLIPS, GOODYEAR, RENAULT, PEUGEOT, EXXON, GENERAL ELECTRIC, FIRESTONE, MOBILE OIL, NCR, AND ABBOT INDUSTRIES.

9. TOTAL CHILEAN EXPORTS ROSE IN VALUE FROM \$2,082.6 MILLION IN 1976 TO \$2,190.3 MILLION BY THE END OF 1977. OF THIS LATTER FIGURE, TRADITIONAL EXPORTS WERE VALUED AT \$1,577.7 MILLION AND NON-TRADITIONAL EXPORTS AT \$612.62:/;2)89.. INDUSTRIAL XVXICH LOGS (\$70.4 MILLION), CHEMICAL (\$77.9 MILLION), FOOD (\$82.6 MILLION) AND METALS (\$103.2 MILLION) ACCOUNTED FOR MOST OF THE EXPORTS. DURING 1977 CHILE'S NON-COPPER EXPORTS TOTALLED \$925.4 MILLION OF WHICH \$363.2 MILLION DOLLARS WORTH OF GOODS WENT TO LATIN AMERICAN COUNTRIES, \$113.4 MILLION TO THE UNITED STATES, \$3.6 MILLION TO DANADA, \$153.9 MILLION TO THE EUROPEAN COMMON MARKET, \$133.3 MILLION TO JAPAN, \$14.4 MILLION TO CONFIDENTIAL

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SPAIN, \$6.3 MILLION TO ABU-DHABI, \$9.7 MILLION TO SOUTH KOREA, \$19.8 MILLION TO IRAN AND \$107.9 MILLION TO OTHER COUNTRIES.

10. DIFFERENTIAL LABOR STANDARD: THE GOC'S LABOR LAW IS NATIONAL IN SCOPE ENFORCEABLE THROUGHOUT THE TRADE UNION ACTIVITIES UNDER DL 198. THE GOC IS ESPECIALLY SENSITIVE TO LABOR RELATIONS IN THE COPPER INDUSTRY WHOSE EXPORT EARNINGS ACCOUNT FOR MORE THAN 50 PERCENT OF THE COUNTRY'S FOREIGN EXCHANGE. THE GOC NOW CONTROLS MOST TRADE UNIONS INVOLVED IN COPPER PRODUCTION. IN SEPTEMBER 1976, THE GOC BY DECREE REMOVED THE DEMOCRATIC LABOR UNION LEADERS IN THE LARGEST COPPER SECTOR AND REPLACED THEM WITH POLITICALLY RELIABLE UNION LEADERS. IN BANKING ALSO, THE GOC BY DECREE REMOVED THE PRESIDENT OF THE STATE BANK EMPLOYEES FEDERATION AND REPLACED HIM WITH A POLITICALLY RELIABLE BANK WORKER.

1. THE GOC ALSO CONTROLS WAGE LEVELS THROUGH SEVERAL MECHANISMS. BY DECREE LAW 676, THE GOC READJUSTS WAGES THROUGHOUT THE COUNTRY APPROXIMATELY THREE TO FOUR TIMES A YEAR FOR THE FULL AMOUNT OF THE CONSUMER PRICE INDEX. ON OCCASION, THE GOC HAS ALSO DECREED EXTRAORDINARY WAGE INCREASES AND HAS TWICE RAISED THE MINIMUM WAGE. IN THE REVISED LABOR CODE, THE GOC NOW PERMITS THE LEGAL TERMINATION OF ANY NEW LABOR CONTRACT WITH THIRTY DAYS WRITTEN NOTICE BY EITHER PARTY (NOT JUST THE EMPLOYEE, AS PREVIOUSLY). THIS NEW LAW ESTABLISHES A DIFFERENTIAL MINIMUM WAGE BY PERMITTING EMPLOYERS WHO MUST TRAIN EMPLOYEES TO EMPLOY PERSONS YOUNGER THAN 21 AT 60 PERCENT OF THE MINIMUM WAGE

FOR UP TO TWO YEARS.

12. THE GOC HAS FORMED INDUSTRIAL TRIPARTITE COMMISSIONS WHICH ARE PERMITTED TO ESTABLISH AN INDUSTRY-WIDE CONTRACT FOR ALL EMPLOYERS AND EMPLOYEES. THESE COMMISSIONS WORK ON THE BASIS OF UNANIMITY AMONG THE GOVERNMENT, BUSINESS AND LABOR REPRESENTATIVES

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AND THEIR AGREEMENTS ARE SUBJECT TO THE APPROVAL OF BOTH THE MINISTER OF LABOR AND THE MINISTER OF ECONOMY. COLLECTIVE BARGAINING AT ANY LEVEL OF THE SOCIETY IS NOT PERMITTED, ALTHOUGH THE GOVERNMENT HAS STATED THAT COLLECTIVE BARGAINING WITH COMPULSORY ARBITRATION WILL BE DECREED BY MARCH 1979. THE GOC HAS ALSO PERMITTED EMPLOYERS TO FIRE UP TO NINE EMPLOYEES A MONTH REGARDLESS OF THE PROVISIONS OF OLD COLLECTIVE BARGAINING AGREEMENTS. COLLECTIVE DISCHARGES OF MORE THAN TEN PERSONS REQUIRE THE PERMISSION OF THE MINISTER OF LABOR AND THE MINISTER OF ECONOMY.

13. CONCLUSION. CHILEAN LABOR LAW AND PRACTICE DOES NOT FAVOR EITHER EXPORT OR IMPORT SUBSTITUTING INDUSTRIES. IN GENERAL, HOWEVER, THE PRESENT SEVERELY CURTAILED STATE OF TRADE UNION FREEDOMS MEANS THAT ENFORCEMENT OF LABOR STANDARDS DEPENDS LARGELY ON EMPLOYER INTEGRITY OR UNDERSTAFFED AND UNDERFUNDED GOVERNMENT AGENCIES. THE TRADE UNIONS THEMSELVES PLAY ONLY A MARGINAL ROLE AT THIS TIME.

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INFORMATION EXCHANGE, STANDARDS, LABOR, LABOR LAW, TRADE LAW, FOREIGN TRADE
Control Number: n/a
Copy: SINGLE
Draft Date: 28 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978SANTIA04870
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780271-0233
Format: TEL
From: SANTIAGO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780611/aaaaajnp.tel
Line Count: 363
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 46bdc97d-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 7
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 STATE 136706, 78 SANTIAGO 4753
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 08 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2172052
Secure: OPEN
Status: NATIVE
Subject: LABOR STANDARDS AND INTERNATIONAL TRADE
TAGS: ETRD, ELAB, CI
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/46bdc97d-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014